

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
GORDON D. SPUNICH,

Appellant,

v.

SPOKANE COUNTY AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 1012

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

THIS MATTER being the appeal of a \$25 civil penalty for an alleged open fire, having come on regularly for an informal hearing before the Pollution Control Hearings Board on the 1st day of July, 1976 in Spokane, Washington; and appellant Gordon D. Spunich appearing pro se, and respondent Spokane County Air Pollution Control Authority appearing through its attorney, James P. Emacio, Deputy Prosecuting Attorney, and Board member present at the hearing being W. A. Gissberg, and the Board having considered the exhibit, records and files herein and having reviewed the proposed Findings of Fact, Conclusions of Law and Order

1 of the presiding officer mailed to the parties on the 16th day of
2 July, 1976, and more than twenty days having elapsed from said service;
3 and

4 The Board having received no exceptions to said proposed Findings
5 of Fact, Conclusions of Law and Order and the Board being fully advised
6 in the premises; now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusions of Law and Order dated the 16th day of
9 July, 1976, and incorporated by reference herein and attached hereto
10 as Exhibit A, are adopted and hereby entered as the Board's Final
11 Findings of Fact, Conclusions of Law and Order herein.

12 DONE at Lacey, Washington, this 19th day of August, 1976.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 CHRIS SMITH, Chairman

16 
17 ART BROWN, Member

18 
19 W. A. GISSBERG, Member

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25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

CERTIFICATION OF MAILING

I, Dolories Osland, certify that I deposited in the United States mail, copies of the foregoing document on the 20th day of August, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Gordon D. Spunich
East 11312 - 36th
Spokane, Washington 99206

Mr. James P. Emacio
Deputy Prosecuting Attorney
County-City Building
West 1100 Mallon
Spokane, Washington 99201

Spokane County Air Pollution
Control Authority
North 811 Jefferson
Spokane, Washington 99201

Dolories Osland
DOLORIES OSLAND, Clerk of the
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
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An informal hearing on an alleged open fire violation of respondent's regulations came on before Board Member W. A. Gissberg on July 1, 1976 in Spokane, Washington. Appellant Gordon D. Spunich appeared pro-se; Spokane County Air Pollution Control Authority appeared by and through its attorney, James P. Emacio.

Having considered the testimony, the Board makes and enters the following

FINDINGS OF FACT

I.

Respondent, pursuant to Section 5, Chapter 69, Laws of

1 1974 (3rd Ex. Sess.), has filed with this Board a certified copy
2 of its Regulations, the contents of which is judicially noted.

3 II.

4 Appellant, Gordon D. Spunich, admits that on April 3,
5 1976, he permitted and maintained an open fire in violation of
6 Article VI, Section 6.01 of Spokane County Air Pollution Control
7 Authority Regulation 1. That regulation, (Article VI, Sec. 6.01
8 (A) (5) (b)) allows certain types of fires (yard vegetation and
9 garden waste) by general permit "not to exceed three (3) weeks
10 in the Spring and Fall. The permit periods, to be designated by
11 the Board (respondent) or the Control Officer, shall be announced
12 by public notice." The Board did not permit the 1976 spring burn
13 days until April 5, 1976, 2 days after the appellant's fire.

14 III.

15 Appellant appealed the imposition upon him by respon-
16 dent of a \$25.00 civil penalty and contends that respondent should
17 establish the time for permitted burns earlier in the springtime
18 of the year, that he was unaware of the necessity for procuring a
19 permit and that his neighbors were under the belief and impression
20 that there were no burning restrictions.

21 IV.

22 Respondent, Spokane County Air Pollution Control Author-
23 ity, for establishing the permitted dates during which open burning
24 was allowed, conducted a public hearing thereon preceded by publica-
25 tion of notice thereof.

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

V.

Any Conclusion of Law hereinafter stated which may be deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

I.

Appellant violated respondent's Regulation 1. The Pollution Control Hearings Board has no legal authority to establish regulations for open burning. That responsibility, under the Clean Air Act, is vested in local air pollution control authorities and the Department of Ecology. Appellant's efforts to advance the days of permitted burn to times earlier in the spring should be addressed to the Spokane Air Pollution Control Authority. The unlawful acts of others do not legalize appellant's violation of respondent's regulations.

II.

The civil penalty is reasonable in amount and should be upheld.

III.

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

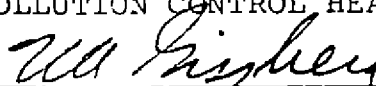
From these Conclusions the Board makes and enters this

ORDER

The civil penalty of \$25.00 is affirmed.

DATED this 16 day of July, 1976.

POLLUTION CONTROL HEARINGS BOARD


W. A. GISSBERG, Member
and Presiding Officer

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER